

1 and I would not just assign my license or sell my license to  
2 some other party without talking to him first about it. It  
3 would be silly.

4 Q Has Mr. Kay ever exercised an option as to any of  
5 your stations?

6 A No.

7 Q Isn't it true that, in fact, you and Mr. Kay never  
8 really followed this procedure quite the way it's written  
9 here?

10 A That's correct.

11 MR. SCHAUBLE: Objection. Written where?

12 MR. KELLER: In the agreement. I'm sorry.

13 BY MR. KELLER:

14 Q Discussed here. When I said written here, I meant  
15 discussed here. Refer to page 127 of the transcript,  
16 please? It's also true, is it not, you testify here that in  
17 one occasion, as a matter of fact, you actually received  
18 more than \$20,000 for the sale of a station that was  
19 negotiated between you, Mr. Kay and a third party, correct?

20 A That's correct.

21 Q Is it your understanding that if the literal terms  
22 of the contract were nonetheless followed, you could have  
23 been left with only \$500 in that situation?

24 A That's true. That's --

25 Q Then, how is it that this situation that's

1 described here came about, that you ended up with more than  
2 \$20,000?

3 A Well, our longtime understanding was that if we  
4 were to profit, if I were to profit from a station, that I  
5 would split the revenues with Kay in some way that would  
6 work out, and this is, what I wanted was \$20,000 from  
7 selling the station, and --

8 Q Was there some reason -- I'm sorry, finish your  
9 answer. I didn't mean to cut you off.

10 A And, he agreed, as well.

11 Q Is there some reason why you felt obliged to share  
12 any of the proceeds in the situation with him, beyond the  
13 written agreement for the \$500 option? Is there some reason  
14 why you felt some sort of an obligation to share?

15 A Well, Mr. Kay put the time and effort into helping  
16 me locate the frequency and helped me license it. He helps  
17 load the station. He may have helped in clearing the  
18 frequency of other radio companies, other clients -- excuse  
19 me, he might have helped in clearing the frequency of co-  
20 channel users, or he might have invested some money. It was  
21 a friendly relationship and I felt it best that we share in  
22 the profits of it.

23 Q Describe what you mean by when you say helped  
24 clearing the channel or co-channel users?

25 A All these frequencies, when I obtained the

1 licenses, as far as I recall, had other companies also  
2 licensed on the frequency in the same given geographical  
3 area. And, under the FCC rules, you only could have so many  
4 companies with so many radios in that area. They call it an  
5 area of protection.

6 TO make the frequency more valuable to me as a  
7 licensee, and obviously to Mr. Kay as someone who's going to  
8 get my capacity, to move other people off the frequency is  
9 of great value. But, to do that, you have to find out  
10 whether or not they're in business. A lot of businesses  
11 closed and the license is good for five years, and the  
12 license doesn't go away just because the business closed.  
13 So, you'd have to seek their cancellation of their licenses.  
14 Sometimes, you have to cut them a deal, to buy their  
15 equipment, to upgrade them to newer equipment or a newer  
16 type of system.

17 It was a lot of work entailed in doing all of this  
18 and Mr. Kay did this work. So, he was, in my mind, entitled  
19 to share in the profit of it.

20 Also, he would be losing a channel capacity for  
21 loading customers and customers that he might have loaded on  
22 the system had to be moved to another frequency and there  
23 was a cost of that, as well.

24 Q With any of your repeater stations, UHF or the 800  
25 MHz licenses, do you very often sell stations?

1           A     No, I'm not really in the business of selling  
2     stations. This is the bread and butter of business to my  
3     point of view. I acquire the stations. It gives me the  
4     ability to make money. If I didn't have the stations, I'd  
5     make less money or have to take my customers to somebody  
6     else and, again, make less money.

7           Q     Did there come a time when Mr. Kay approached you  
8     about the possibility of selling all of your 800 MHz  
9     stations subject to the management agreement?

10          A     Yes.

11          Q     Please describe that circumstance?

12          A     Some day, I don't remember the time, but he called  
13     me and asked me to come down and talk about it. He had  
14     received an offer from another party to buy all of my  
15     stations. This was a party that he had done business with  
16     before and myself, too, and basically they had offered \$1.5  
17     million for mine, for all my licenses.

18          Q     And, what transpired in that conversation between  
19     you and Mr. Kay then?

20          A     Well, I know Jim needed funds because of the  
21     litigation costs, so I'm sure he would have been happy to  
22     have gotten a percentage or that, undefined percentage of  
23     that. But, basically, I really didn't want to sell the  
24     stations for several reasons.

25                 One, I thought that they might gain more value,

1 given the climate of the radio industry changing. And, two  
2 was that I really wanted to keep the stations to continue  
3 the income strength generated by providing repeater service.  
4 This is a long-time effort, something that would clearly  
5 help me in my older days and retirement, to have returning  
6 revenue without having to do a lot of work.

7 Q So, you --

8 A I turned down the offer, yes.

9 Q What was Mr. Kay's reaction to that?

10 A He was okay with it. He understood. He was also  
11 in the same, he expressed the same opinion that he really  
12 didn't want to sell the stations either. It would have  
13 caused a lot of problems with channel capacity and we both  
14 had the idea of growing the businesses, not shrinking them.

15 Q Mr. Sobel, prior to the formal start of the  
16 proceeding, official reissue of the hearing designation, did  
17 you become aware of a draft of a --

18 MR. SCHAUBLE: Objection, relevance, Your Honor.

19 CHIEF JUDGE CHACHKIN: Well, let's hear where he's  
20 going.

21 MR. KELLER: Where I'm going is this, Your Honor.  
22 I'd like to have Marc -- what exhibit are we up to?

23 MR. SHAINIS: Number five.

24 (Pause.)

25 CHIEF JUDGE CHACHKIN: All right, the designation

1 order in this case, will be marked for identification as  
2 Exhibit 5.

3 (The document referred to was  
4 marked for identification as  
5 Kay Exhibit 5.)

6 MR. KELLER: Why don't we establish this in  
7 questioning the witness, Your Honor, that this is not a  
8 factual --

9 CHIEF JUDGE CHACHKIN: It isn't?

10 MR. KELLER: No, this is a draft of the  
11 designation order.

12 CHIEF JUDGE CHACHKIN: Oh, a draft.

13 MR. KELLER: You will see noted at the top, for  
14 identification purposes, it's dated draft 9/15/94.

15 CHIEF JUDGE CHACHKIN: All right. The document  
16 will be identified as a draft of the designation order.

17 BY MR. KELLER:

18 Q Mr. Sobel, would you review that document, please,  
19 and you don't have to read it, but I ask you, are you  
20 familiar with this document?

21 A Yes.

22 Q Is this an accurate copy of the document to which  
23 you just referred?

24 A Yes.

25 Q First of all, how did you become aware of this

1 document?

2 A Mr. Kay called me and said he had obtained this  
3 document.

4 Q Did he say how he obtained it?

5 A Through FOIA.

6 Q FOIA being F-O-I-A, the Freedom of Information  
7 Act?

8 A Correct.

9 Q Please turn to the second page of the document,  
10 paragraph four? And, it states there, "Information  
11 available to the Commission also includes that James A. Kay,  
12 Jr. has done business under a number of assumed names. We  
13 believe that these names include some or all of the  
14 following." The first name that's listed is Air Wave  
15 Communications. Is that the name under which you do  
16 business?

17 A That's correct.

18 Q And, if you notice on down, they continue a litany  
19 of names and several lines down, maybe two-thirds of the way  
20 down, the paragraph on the left, the name also comes up,  
21 Marc Sobel, d/b/a Air Wave Communications. Is that also,  
22 that's obviously you, correct?

23 A That's me, correct.

24 Q What was your reaction when you first read this --  
25 MR. SCHAUBLE: Objection, relevance, Your Honor.

1 I would point out among other things, Mr. Sobel's state of  
2 mind is not directly at issue in this proceeding. Rather,  
3 in the other proceeding --

4 MR. KELLER: Well, Mr. Sobel's state of mind, I  
5 don't even know that that's really -- where I'm going with  
6 this, Your Honor, is to establish the reason why there was a  
7 management agreement reduced to writing and entered into in  
8 this case. The essence of the misrepresentation issue in  
9 this case is that Mr. Kay executed a declaration in which he  
10 denied that he had any interest in Mr. Sobel's stations.

11 The Bureau's contention is that a management  
12 agreement between Mr. Kay and Mr. Sobel somehow constitutes  
13 an interest and that, therefore, that should have been  
14 disclosed or was somehow inconsistent with the declaration.  
15 In that line of reasoning, I think the reasons why Mr. Sobel  
16 and Mr. Kay entered into that agreement and the background  
17 in their entering into that agreement is irrelevant, at  
18 least the background, if not directly relevant to the  
19 misrepresentation issue.

20 CHIEF JUDGE CHACHKIN: The objection is overruled.

21 BY MR. KELLER:

22 Q What was your reaction when you first read this  
23 language?

24 A Well, first of all, I was surprised, because, as  
25 you can see, I'm a real person. I'm not an alias of James



1 Kay, clearly. My business is my business. Air Wave  
2 Communications, he has nothing to do with it. He's not a  
3 partner, he's not part of the d/b/a and it was just an  
4 absolute surprise and a little bit of anger that they should  
5 include my name in their process of the HDO against James  
6 Kay. In other words, I thought it was entirely unfair and  
7 inappropriate.

8 MR. KELLER: I would now like to have marked  
9 Exhibit --

10 MR. SHAINIS: Six.

11 CHIEF JUDGE CHACHKIN: Can you describe the  
12 document you've just passed around.

13 MR. KELLER: Mr. Sobel --

14 CHIEF JUDGE CHACHKIN: What is this document?

15 MR. KELLER: This document, by the way, for  
16 identification purposes, is a letter on Air Wave  
17 Communications letterhead, addressed to Gary Stanford of the  
18 Federal Communications Commission in Gettysburg, dated  
19 12/6/94. It's a two-page document that purports to be  
20 signed by Marc Sobel.

21 CHIEF JUDGE CHACHKIN: All right, that document  
22 will be marked for identification as Kay Exhibit 6.

23 (The document referred to was  
24 marked for identification as  
25 Kay Exhibit 6.)

1 MR. SCHAUBLE: Your Honor, I would also point out  
2 for the record that this particular document was also an  
3 exhibit in the Sobel proceeding. I believe it was WTB  
4 Exhibit 46.

5 MR. KELLER: I believe that at no point was  
6 included within in your exhibits in this proceeding?

7 MR. SCHAUBLE: Correct.

8 MR. KELLER: Which is the reason I made it here.

9 MR. SCHAUBLE: Okay.

10 MR. KELLER: Your Honor, I want to go ahead and  
11 take care of a housekeeping matter. Can I move the  
12 admission of Kay Exhibits 4 and 5?

13 CHIEF JUDGE CHACHKIN: Any objection to four?

14 MR. SCHAUBLE: Your Honor, four was the --

15 MR. KELLER: Federal licensing.

16 MR. SCHAUBLE: Object on the basis of relevance  
17 for the reasons previously stated.

18 CHIEF JUDGE CHACHKIN: Well, I haven't heard your  
19 objection of why it's not relevant?

20 MR. KNOWLES-KELLETT: Your Honor, it has to do  
21 with the company that has nothing to do with this case.

22 CHIEF JUDGE CHACHKIN: But, it does show that  
23 services are available. That licensees don't prepare their  
24 own applications, that they can use different services,  
25 doesn't it? One of your contentions is that Mr. Kay

1 prepared Mr. Sobel's application and that's one of the  
2 contentions, that that constitutes an element of control,  
3 isn't that right?

4 MR. KNOWLES-KELLETT: I think the testimony was  
5 that this company somehow prepared the initial application  
6 for this document. It just shows that they do with all  
7 applications.

8 CHIEF JUDGE CHACHKIN: Well, this witness has  
9 testified and you can cross-examine him.

10 MR. KNOWLES-KELLETT: The applications are not at  
11 issue.

12 CHIEF JUDGE CHACHKIN: I understand that, but the  
13 witness has testified that they also do official  
14 applications and you can cross-examine.

15 MR. KNOWLES-KELLETT: But, the document is not.

16 CHIEF JUDGE CHACHKIN: Well, I'll overrule the  
17 objection. You can cross-examine the witness and that  
18 exhibit is received, Kay Exhibit 4 is received.

19 (The document referred to,  
20 having been previously marked  
21 for identification as Kay  
22 Exhibit 4, was received in  
23 evidence.)

24 MR. KELLER: Then, Kay Exhibit 5, Your Honor.

25 CHIEF JUDGE CHACHKIN: All right, do you object to

1 Kay Exhibit 5?

2 MR. SCHAUBLE: Your Honor, we have no objection  
3 except the basis stated by counsel.

4 CHIEF JUDGE CHACHKIN: Kay Exhibit 5 is received.  
5 I assume Kay Exhibit 6, which you introduced in the other  
6 hearing, you have no objection to that?

7 (The document referred to,  
8 having been previously marked  
9 for identification as Kay  
10 Exhibit 5, was received in  
11 evidence.)

12 MR. SCHAUBLE: We have no objection to that, Your  
13 Honor.

14 CHIEF JUDGE CHACHKIN: Are you offering Kay  
15 Exhibit 6?

16 MR. KELLER: Sure, Your Honor.

17 CHIEF JUDGE CHACHKIN: Kay Exhibit 6 is received.  
18 (The document referred to,  
19 having been previously marked  
20 for identification as Kay  
21 Exhibit 6, was received in  
22 evidence.)

23 MR. KELLER: I'll ask him some questions about it.

24 BY MR. KELLER:

25 Q Mr. Sobel, please refer to Kay Exhibit 6, which is

1 the letter to Mr. Stanford. Are you familiar with this  
2 document?

3 A Yes, I wrote it.

4 Q Is that your signature at the end?

5 A Yes.

6 Q The date of the document states 12/6/94. Is that  
7 December 6, 1994?

8 A Yes.

9 Q Is that when, on or about that date, you sent this  
10 letter to the FCC?

11 A Yeah, it was shortly after I received the  
12 information regarding my name being included in the case,  
13 the proposed HDO order.

14 Q What was the purpose of this particular letter?

15 A Well, after seeing that they clearly thought I was  
16 an alias, a ghost or didn't exist at all, I thought it be  
17 appropriate to point out the fact that I am real and I wrote  
18 this letter to Mr. Stanford. I think I did a reasonable job  
19 in detailing the situations where the Commission is holding  
20 up my licenses, applications that I had made, prepared for  
21 another company. And to clarify who I was in here, I make a  
22 statement that I'm an independent two-way radio dealer. I  
23 do business with Mr. Kay. I included, not with this  
24 document here, but with my original, I included copies of my  
25 tax registration permits, Yellow Pages and other information

1 to show that I'm a real entity.

2 Basically, I wanted them to acknowledge and see  
3 that I'm a separate person, rather than allowing this other  
4 mistake to continue.

5 Q Would you read the last sentence of the letter out  
6 loud, please?

7 A I would --

8 MR. SCHAUBLE: Objection, Your Honor, it's in  
9 evidence.

10 CHIEF JUDGE CHACHKIN: All right, sustained. The  
11 document speaks for itself.

12 BY MR. KELLER:

13 Q Is it true that in this document, you invited Mr.  
14 Stanford to contact you if he required any additional  
15 information?

16 MR. SCHAUBLE: Objection, the document speaks for  
17 itself.

18 BY MR. KELLER:

19 Q All right, I will state that the document speaks  
20 for itself. Did Mr. Stanford ever contact you in response  
21 to this letter?

22 A No, I never heard from anybody.

23 Q All right, that was going to be my next question.  
24 Did anybody from the FCC ever contact you?

25 A No.

1 Q It's true, is it not, that during 1994, you  
2 noticed that a lot of the processing on your various  
3 applications had frozen up, so to speak?

4 A That's correct. In fact, it's detailed in this  
5 letter.

6 Q And, is it also true that you were somewhat  
7 confused of that prior to receiving, becoming aware of this  
8 language in the draft designation?

9 A That's correct.

10 Q Now, after you received Kay Exhibit 5 or after you  
11 became aware of it, after you became aware of that language  
12 in paragraph four, what, if anything, did you do?

13 A I spoke to Mr. Kay about it and I spoke to my  
14 attorney at the time, Brown and Schwaninger, about it.

15 Q Was any course of action agreed upon at that time,  
16 as to what might --

17 MR. EISEN: Your Honor, since the witness  
18 indicated he spoke with an attorney, may have a moment to  
19 talk to the witness about the matter of privilege?

20 CHIEF JUDGE CHACHKIN: Well, I don't think it's  
21 necessary, because now he's saying what was the end result  
22 of that, and I assume that's going to be the preparation of  
23 the agreement.

24 MR. EISEN: I think my request is enough to simply  
25 remind the witness that he is wandering into an area that

1 may involve some privilege and he should tread carefully.

2 Thank you, Your Honor.

3 MR. KELLER: Yes, let me do it this way, Mr.

4 Sobel.

5 BY MR. KELLER:

6 Q Regardless of how I may pose my questions, I do  
7 not want you to respond with any communications you may have  
8 given to your attorneys or that they may have communicated  
9 back to you. So, let me rephrase the question.

10 Did you decide to take any specific course of  
11 action as a result of becoming aware of that language in the  
12 draft HDO?

13 A I asked the attorneys to draw up an agreement  
14 between Mr. Kay and I to clarify our separateness, our  
15 positions as two businesses, and our relationship in my  
16 stations that he managed.

17 CHIEF JUDGE CHACHKIN: Before we go on, I just  
18 want to make clear, as far as the attorney-client privilege,  
19 it's his privilege if he wants to release and add, and I'll  
20 permit you if it comes up again to ask the witness if he  
21 wants to do that.

22 MR. EISEN: Thank you, Your Honor. I would simply  
23 remind him that this area he's treading is one in which he  
24 should be careful.

25 CHIEF JUDGE CHACHKIN: All right, but we're not



1 going to tread in that area, apparently, so fine.

2 BY MR. KELLER:

3 Q Mr. Sobel, please turn in the --

4 CHIEF JUDGE CHACHKIN: But, is it correct that  
5 your counsel prepared this agreement? You didn't personally  
6 prepare it?

7 MR. KELLER: Yes, I'm about to enter into some  
8 questions about that agreement, Your Honor.

9 CHIEF JUDGE CHACHKIN: All right.

10 MR. KELLER: I believe this may be in the next  
11 volume. There's some differences in where the volumes  
12 break. WTB Exhibit 339, please, if you could locate that  
13 and get it in front of you?

14 THE WITNESS: Excuse me, where do you want me to  
15 look?

16 MR. KELLER: Exhibit 339, WTB Exhibit 339.

17 MR. SCHAUBLE: Your Honor, may I approach the  
18 witness and help --

19 CHIEF JUDGE CHACHKIN: I think the witness has got  
20 it.

21 (Pause.)

22 BY MR. KELLER:

23 Q Do you recognize Exhibit 339?

24 A Yes.

25 Q Is this, in fact, the agreement that was prepared

1 for you by your attorneys?

2 A Yes, Brown and Schwaninger prepared this  
3 agreement.

4 Q What is the date on the agreement that's executed?

5 A The 28th day of October, 1994.

6 Q Do you recall, did you receive preliminary drafts  
7 of this agreement to which you're commenting?

8 A No.

9 Q How did it come about?

10 A My understanding, this is a common agreement that  
11 attorneys have prepared or, I should say, boilerplate, and  
12 they just plugged in the particulars.

13 Q This is October of 1994. At that point, how long  
14 had you been operating under this oral understanding with  
15 Mr. Kay?

16 A Since 1990, when I first put in my first computer  
17 on 800 MHz.

18 Q In that time, were you in any way dissatisfied  
19 with Mr. Kay's performance under the oral arrangement?

20 A Not at all.

21 Q Did you have any reason to mistrust Mr. Kay?

22 A No.

23 Q Did you have any reason to feel that you wanted to  
24 modify or change the relationship that you had with Mr. Kay?

25 A Not at all.

1           Q     What was the purpose of your requesting a written  
2     agreement?

3           A     Well, first of all, the HDO clearly involved me in  
4     his proceeding. The proposed HDO. I was very fearful that  
5     I would get sucked into this process.

6                     I felt that it was necessary to clarify on paper  
7     our positions.

8           Q     After this agreement was executed, did you and Mr.  
9     Kay change the way you operated under the oral agreement?

10          A     Nothing changed at all.

11          Q     Now, did there come a time when you learned that a  
12     formal HDO in Mr. Kay's proceeding had actually been  
13     adopted?

14          A     Yes.

15                   MR. KELLER: I'm not going to offer this into  
16     evidence. I just want to show the witness a copy of the  
17     actual designation orders. I don't want to introduce them  
18     into evidence.

19                   CHIEF JUDGE CHACHKIN: All right, go ahead.

20                   BY MR. KELLER:

21          Q     Take a moment and just look through that document,  
22     please? My first question, Mr. Sobel, if you've finished  
23     examining it, looking at the first page of the HDO, did it  
24     indicate the date that it was issued by the Commission,  
25     released?

1 A The release date says December 13, 1994.

2 Q Is that 13 or 31?

3 A December 13, 1994.

4 Q I thought it was 31?

5 CHIEF JUDGE CHACHKIN: No, it's the 13th according  
6 to my records.

7 MR. KELLER: Oh, I'm sorry, I'm confused. I've  
8 just been corrected, thank you.

9 BY MR. KELLER:

10 Q Mr. Sobel, turn to paragraph four of the HDO and  
11 review that language. And, compare it, if you would, to  
12 paragraph four in the draft HDO that you received.

13 MR. SCHAUBLE: Just an inquiry, does counsel mean  
14 paragraph four or paragraph three? I think counsel may be  
15 referring to paragraph three.

16 BY MR. KELLER:

17 Q Yes, paragraph three of the HDO, would you please  
18 compare that to paragraph four of the draft HDO?

19 A Go ahead.

20 Q How do those two compare?

21 A They appear to be identical.

22 Q Do they both still mention Air Wave Communications  
23 and Marc Sobel d/b/a Air Wave Communications?

24 A Yes, they do.

25 Q Does the official HDO still identify Air Wave

1 Communications and Marc D. Sobel d/b/a Air Wave  
2 Communications as assumed names under which they believe Mr.  
3 Kay is doing business?

4 A Yes.

5 Q When you became aware of and learned of the  
6 official HDO, did you notice any other differences between  
7 it and the draft HDO?

8 A The issued HDO also included an appendix with  
9 licenses of Mr. Kay and some of my licenses.

10 Q So, it actually specified your license in it?

11 A That's right. It appeared that they were going to  
12 take my licenses away in Mr. Kay's hearing, which didn't  
13 make any sense at all to me.

14 Q With the same admonitions as before regarding  
15 privilege, what, if anything, did you do at that point?

16 A Well, again, I talked to Mr. Kay and my attorneys,  
17 Brown and Schwaninger, regarding this and just talked to  
18 them about what to do about it.

19 Q Was any course of action that you recall decided  
20 upon on how to deal with it?

21 A Not at that moment. It was clear that the  
22 Commission could not take my licenses away on his hearing.  
23 It was clearly a screw up on their case. I had already  
24 written to the Bureau in a letter to Gary Stanford, and I  
25 don't know why they had continued to leave my name in their

1 hearing against Mr. Kay. It was certainly a mess.

2 MR. KELLER: Excuse me one moment, Your Honor.

3 Can we go off the record for just one moment, please?

4 CHIEF JUDGE CHACHKIN: All right.

5 (Discussion held off the record.)

6 CHIEF JUDGE CHACHKIN: Back on the record.

7 Exhibit 41 from the Sobel case?

8 MR. SCHAUBLE: Exhibit 41 from the Sobel  
9 proceeding was Mr. Sobel's January 11, 1995 affidavit.  
10 That's not a separate exhibit in this proceeding, but it is  
11 part of WTB Exhibit 342, which is the motion. That's the  
12 one that was rejected.

13 Similarly, WTB Exhibit 43 in the Sobel proceeding,  
14 which is Mr. Sobel's January 24, 1995 affidavit is not a  
15 separate exhibit in this proceeding, but it's part of WTB  
16 Exhibit 343, which is in evidence in this proceeding.

17 MR. KELLER: All right, thank you for that  
18 clarification.

19 MR. KNOWLES-KELLETT: We might note for the  
20 record, Your Honor, that the two affidavits were identical  
21 except for the date, and so if there's any confusion with  
22 respect to the Sobel transcript, referring to Exhibit 41,  
23 Exhibit 43 works just as well.

24 MR. KELLER: And, that's fine. In fact, I'm  
25 willing to accept that we can take all of this as referring

1 to, in fact, page 22 of Exhibit 343. That is, any  
2 references in the Sobel transcript that's been introduced or  
3 admitted in this proceeding to Exhibit 41 or Exhibit 43 is  
4 actually a reference to page 22, for all relevant purposes,  
5 is a reference to page 22 of WTB Exhibit 343 in this  
6 proceeding.

7 MR. KNOWLES-KELLETT: Except for the portion of  
8 the transcript that discusses why there were dates --

9 MR. KELLER: Why there were dates -- but, since  
10 that one has been excluded, we don't even need to get into  
11 that.

12 MR. KNOWLES-KELLETT: All right, that's  
13 acceptable, Your Honor. Fine.

14 MR. KELLER: With that now, since I'm so bad with  
15 numbers, 343 is the one that is admitted?

16 MR. SCHAUBLE: Correct.

17 BY MR. KELLER:

18 Q Okay, Mr. Sobel, please find and locate Exhibit  
19 343, please? I'll ask you, having done so, to turn to page  
20 22 of Exhibit 343.

21 A Page 22 is not in this book. There's a little  
22 piece of paper with a list of call signs on it.

23 (Pause.)

24 Q 343?

25 (Pause.)

1 MR. KELLER: All right, forget those call signs.  
2 I don't know where these came from.

3 (Pause.)

4 CHIEF JUDGE CHACHKIN: All right, the witness has  
5 the page.

6 (Pause.)

7 BY MR. KELLER:

8 Q Mr. Sobel, now you've now located page 22 of WTB  
9 Exhibit 343?

10 A Yes.

11 Q You are familiar with this document?

12 A Yes.

13 Q That is your signature on this document?

14 A Yes.

15 Q Can you explain to me the circumstances under  
16 which you came to sign this document?

17 A Well, since the Commission included my name in the  
18 HDO against Mr. Kay, it was clear that they made a mistake.  
19 Even though I attempted to clarify my existence with them,  
20 my attorneys, Brown and Schwaninger, had prepared this  
21 document for Mr. Kay to be submitted, and then part of this  
22 document was I placed my affidavit, again clarifying the  
23 position that I had no interests, or Kay had no interests in  
24 my license.

25 Q Now, did you edit the document in any way or did



1 you sign it as prepared by the attorneys?

2 A I signed it as it was prepared.

3 Q But, you did review it first?

4 A Of course.

5 Q Did you find it to be factually accurate?

6 A Yes.

7 Q Now, you notice that this document is here,  
8 Exhibit 343 is an attachment to a much larger document, a  
9 17-page document with a couple of exhibits, and the title of  
10 the first page, page Y, is Motion to Enlarge, Change or  
11 Delete Issues.

12 Did you review this particular document at the  
13 time that you signed the affidavit?

14 A No.

15 Q Were you familiar with the various contents of  
16 this document at the time you signed the affidavit?

17 A Not truly familiar with it.

18 Q Did you understand that this document included or  
19 were you told that this document included a lot of other  
20 procedural matters involving Mr. Kay's proceeding beyond  
21 this particular affidavit?

22 A Yes.

23 Q I want you now to go back to, and this time you're  
24 going to have to, I think, switch to WTB Exhibit 329. We're  
25 getting back to transcripts of your hearing. I believe this

1 is in 329. Let me just double check. Yes, page 303 of the  
2 transcript.

3 Before I ask you about page 303, Mr. Sobel, after  
4 you signed this affidavit, what did you do with it?

5 A I gave it to Mr. Kay.

6 Q What was your understanding that he was going to  
7 do with it?

8 A It would be submitted to the Commission and filed  
9 with the Commission, along with the management agreement.

10 Q Were you there after -- and I'm not talking about  
11 later in preparation for your hearing in this proceeding --  
12 back at that time, were you ever later provided with a copy  
13 of the Motion to Enlarge that was filed at that time?

14 A No, I don't think I ever got one.

15 Q Now, at page 303, you make a statement in response  
16 to a question here, I'm talking page 303 of the transcript,  
17 and again, for purposes of the record, we're at Exhibit 329,  
18 line five. You say, "Mr. Kay filed it, along with his  
19 Motion to Enlarge. It went to the Judge."

20 Now, you later, when you said it there, you were  
21 referring to a copy of the written management agreement,  
22 correct?

23 A Yes.

24 Q You've since come to find out that that's not  
25 true, correct?

1 A That's correct.

2 Q Did you believe it was true at the time you made  
3 this statement?

4 A Yes.

5 Q What was the basis for that belief?

6 A Well, the whole purpose of the management  
7 agreement was to show our individual companies, the  
8 relationship, and define how the stations were managed. The  
9 whole idea of writing the management agreement was to define  
10 it, and this was filed at the time to present it to the  
11 Commission.

12 Q Did anyone, either your attorneys or Mr. Kay, ever  
13 specifically tell you that the management agreement was  
14 going to be filed as part of this motion?

15 A I assumed it was.

16 Q But, did they tell you it was?

17 A That I don't recall.

18 Q But, you assumed that it was?

19 A That's correct.

20 Q Mr. Sobel, I now want you to go back to page 22 of  
21 WTB Exhibit 343. Having said all that, for the record, I'm  
22 referring now to the affidavit. Mr. Sobel, have you had an  
23 opportunity now to reread this affidavit?

24 A Yes.

25 Q You make the statement in here, "Mr. Kay has no

1 interest in any radio station or license for which I am the  
2 licensee." Can you state for me what you mean, what you  
3 meant at that time by the word interest?

4 MR. SCHAUBLE: Objection, irrelevant as to Mr.  
5 Sobel's state of mind to the issues in this proceeding.

6 CHIEF JUDGE CHACHKIN: Overruled.

7 THE WITNESS: The Commission was clearly  
8 attempting to cancel my licenses in the HDO. They were  
9 attempting to cancel my licenses.

10 The Commission, the word interest is related to  
11 the licenses. Mr. Kay is not a partner of mine. His name  
12 does not appear on my licenses. He's not a part of my  
13 business, and he has no interest in my licenses.

14 This affidavit was related to my licenses and the  
15 Commission's efforts to cancel them.

16 BY MR. KELLER:

17 Q Now, the exact statement says no interest in any  
18 radio station or license. Now, I understand you just  
19 testified that you did not draft this document, but in your  
20 mind, is there a distinction in that usage between the  
21 station and a license?

22 A Not in this way. The station license are kind of  
23 one and the same. On my license, it says regular station  
24 license.

25 Q It says that at the top of the license, doesn't

1 it?

2 A Yeah, in big letters.

3 (Pause.)

4 MR. KELLER: If I could have just a few moments,  
5 Your Honor, like a two-minute break?

6 CHIEF JUDGE CHACHKIN: All right, go off the  
7 record.

8 (Discussion held off the record.)

9 CHIEF JUDGE CHACHKIN: Back on the record.

10 BY MR. KELLER:

11 Q Mr. Sobel, I need you, if you would, to locate in  
12 your binders WTB Exhibits 340 and 341. Now, what is WTB  
13 Exhibit 340? What do you recognize it as being?

14 A This is a management agreement that my attorneys  
15 drew up, between James Kay and myself.

16 Q I notice that unlike the agreement we discussed  
17 just a moment ago, this was dated December 30, 1994. The  
18 earlier one was signed October of '94. What's the reason  
19 for that?

20 A It was to add a couple of licenses to the list and  
21 enable Mr. Kay to pay me \$100 option.

22 Q Now, flipping over to WTB Exhibit 341, is this the  
23 document which affects the addition of the licenses that  
24 you're referring to?

25 A That's correct.

1           Q     Well, Mr. Sobel, I want you to focus your  
2     attention on, first of all, on page one of Exhibit 340, the  
3     first recital paragraph, the first "Whereas..." paragraph,  
4     which lists out the various call signs. And, then, I also  
5     want you to focus your attention on the call signs that are  
6     listed in WTB Exhibit 341. I'm going to approach the  
7     witness again with your permission, Your Honor.

8           CHIEF JUDGE CHACHKIN: All right.

9           MR. KELLER: I'm handing you now, from a moment  
10    ago, this copy is the HDO from this proceeding. I'm going  
11    to refer the witness to what I believe is Appendix A to the  
12    HDO. This is the official HDO in this proceeding. Appendix  
13    A is a list, an enumerated list of stations and numbers 154  
14    through 164 on that list are listed under the heading, "The  
15    following call signs are held in the name of Marc Sobel." I  
16    want to place that list before you.

17           Now, take your time if you need to, to do this.

18           BY MR. KELLER:

19           Q     What I want to ask you, Mr. Sobel, is, is it not  
20    true that of these call signs that were listed in the HDO  
21    Appendix, that only two, namely numbers 155 and 156, were  
22    subject to the management agreement with Mr. Kay? If you  
23    know, fine, but if you don't, take your time to review the  
24    agreement.

25           A     That's correct.

1 Q So, how many of your station licenses are listed  
2 here altogether?

3 A Eleven.

4 Q Of those eleven, nine of them have nothing at all,  
5 have no relationship whatsoever to the management agreement  
6 with Mr. Kay, correct?

7 A That's correct. In fact, they missed a bunch of  
8 my other licenses.

9 Q Mr. Sobel, you had opportunities in the past to  
10 review the HDO, the HDO, the official one, correct?

11 A Yes.

12 Q You've also had opportunities to review the HDO in  
13 your own proceeding, correct?

14 A Yes.

15 Q Was it ever your understanding, based on reading  
16 those documents or based on anything else that was said to  
17 you, that the Commission was in any way attempting to seize  
18 your transmitter equipment or your repeater equipment?

19 A No, not at all.

20 Q Mr. Sobel, you stated that the written management  
21 agreement that we've been discussing was prepared for you or  
22 drafted by your communications counsel, correct?

23 A That's correct.

24 Q Now, the first agreement was executed in October  
25 of 1994. Would they have prepared it shortly before that

1 date?

2 A Within a week or two, probably, yes.

3 Q You've also stated that your communications  
4 counsel prepared the affidavit which you executed in support  
5 of Mr. Kay's Motion to Enlarge, correct?

6 A That's correct.

7 Q That document, I believe, and the record will  
8 reflect that it was executed in January of 1995?

9 A Correct.

10 Q Some three months, approximately, or, actually, I  
11 guess, less, after execution of the management agreement?

12 A That's correct.

13 Q Were these the same communication counsel that  
14 we're talking about?

15 A Yes, Brown and Schwaninger.

16 MR. KELLER: Can I have just a few moments?

17 CHIEF JUDGE CHACHKIN: Yes. Go off the record.

18 (Discussion held off the record.)

19 MR. KELLER: I'm sorry.

20 BY MR. KELLER:

21 Q Going back, Mr. Sobel, to that appendix that we  
22 were referring to in the HDO and Appendix A, we were  
23 referring to the list of your stations, namely Stations 153  
24 through 164.

25 Now, you've already stated that stations, the ones



1 that are listed as 155 and 156 are, in fact, subject to this  
2 800 MHz management agreement, correct?

3 A That's correct.

4 Q As to the other stations, as to the stations  
5 listed in number 154, and as to the stations listed as 157  
6 through 164, my question is, does Mr. Kay provide you with  
7 repeater equipment for any of these stations?

8 A No.

9 Q Do you sublease space from Mr. Kay for any of  
10 these stations?

11 A Some of the stations.

12 Q For those, do you actually pay him money on a  
13 current basis for the lease?

14 A Yes.

15 Q Who loads the customers on these particular  
16 stations?

17 A I do.

18 Q Who bills and collects for those particular  
19 customers?

20 A I do.

21 Q Beyond the site lease and beyond just your general  
22 friendship and social and professional relationship with Mr.  
23 Kay, what formal relationship, if any, does he have to these  
24 stations?

25 A He doesn't.

1 MR. KELLER: Your Honor, I have no further  
2 questions.

3 CHIEF JUDGE CHACHKIN: All right, any redirect?

4 MR. SCHAUBLE: Your Honor, can we take just a  
5 couple of minutes? I don't think we have much.

6 CHIEF JUDGE CHACHKIN: Let's go off the record.

7 (Discussion held off the record.)

8 MR. SCHAUBLE: Your Honor, initially in light of  
9 the questions asked by Mr. Keller, I believe there are two  
10 additional sections of transcript in the Sobel proceeding  
11 which are now directly relevant to Mr. Keller's examination  
12 and I would like Your Honor to move those additional  
13 portions of -- these are both Exhibit 328 -- into evidence.  
14 The first part is --

15 CHIEF JUDGE CHACHKIN: If you have questions,  
16 counsel, you can ask the witness questions on redirect. You  
17 introduced the parts of the exhibit you want him to see.  
18 The witness was cross-examined. You didn't object. If you  
19 have any redirect, go ahead and ask your redirect questions.  
20 Unless you can reach a stipulation with counsel.

21 MR. KELLER: I agree. I think the most efficient  
22 thing is just to ask him the same questions again if you  
23 need to.

24 MR. SCHAUBLE: Okay.

25 //

## REDIRECT EXAMINATION

BY MR. SCHAUBLE:

Q Mr. Sobel, at how many sites do you currently lease space from Mr. Kay?

A I believe it's five.

Q At how many sites do you currently lease space to Mr. Kay?

A One.

Q And, where is that site located?

A Hollywood Hills.

Q Do you recall the names of the sites at which you currently lease space from Mr. Kay?

A Mount Lukens, Sierra Peak, Oat Mountain, Rasnow Peak, Johnstone Peak.

Q Now, with respect to WTB Exhibit 339, which is the management agreement, you testified that it was prepared by Brown and Schwaninger, correct?

A Yes.

Q Now, you also testified that Brown and Schwaninger also represented you at this time, correct?

A Yes.

Q Is it correct that they also represented Mr. Kay at this time?

A Yes.

Q And, at this time, did you have any understanding

1 as to who would be paying your legal fees with respect to  
2 the preparation of this agreement?

3 A Yes.

4 Q What was that understanding?

5 A Mr. Kay would have borne the cost of legal fees.

6 Q Okay. And, is it correct that throughout your  
7 agreement with Mr. Kay, you had an understanding that you  
8 would pay all of the legal fees relating to the management  
9 agreement stations?

10 A Yes, in fact, that was part of our deal.

11 Q Turning to WTB Exhibit 343, which is the Motion to  
12 Enlarge, Change or Delete Issues, the question, Mr. Sobel,  
13 is did you ever hear concerning what the outcome of this  
14 motion was, what the result of this motion was?

15 A I don't think so. I don't recall.

16 Q Do you recall when you first submitted the  
17 management agreement to the Commission?

18 A Yes.

19 Q When was that?

20 A When they requested the information in 308(b).

21 Q Do you recall the date of that 308(b) letter?

22 A No.

23 Q Do you recall in what year it occurred?

24 CHIEF JUDGE CHACHKIN: If you have the date, just  
25 supply it and the witness can agree.

1 MR. SCHAUBLE: Okay, one second, Your Honor.

2 CHIEF JUDGE CHACHKIN: All right.

3 BY MR. SCHAUBLE:

4 Q Mr. Sobel, I direct your attention to --

5 CHIEF JUDGE CHACHKIN: Well, why don't you suggest  
6 the date?

7 BY MR. SCHAUBLE:

8 Q Mr. Sobel, does the date July 3, 1996 sound  
9 correct to you?

10 A I'll trust it is.

11 MR. KELLER: I'll stipulate to that, Your Honor.

12 CHIEF JUDGE CHACHKIN: All right.

13 MR. SCHAUBLE: Your Honor, if I could have one  
14 more minute?

15 (Discussion held off the record.)

16 MR. SCHAUBLE: No further questions, Your Honor.

17 MR. KELLER: Your Honor, I would like just a  
18 moment to consult, please?

19 CHIEF JUDGE CHACHKIN: We'll go off the record.

20 (Discussion held off the record.)

21 CHIEF JUDGE CHACHKIN: Any further questions?

22 MR. KELLER: Yes, just a few. First, and I  
23 apologize I forgot to do this earlier. This is not  
24 redirect, it's rather a clarification. I have no idea if  
25 this is the same thing the witness wanted, but a

1 clarification of something this morning.

2 RE-CROSS-EXAMINATION

3 BY MR. KELLER:

4 Q This morning, Mr. Sobel, you were asked by Mr.  
5 Schauble, I believe, regarding the location of various  
6 stations where your channels are included in an LTR trunk  
7 group, and I believe my understanding is that you wish to  
8 clarify some of those statements?

9 A Yes, I believe I mentioned Lukens and Santiago's  
10 locations. I was in error in saying Santiago -- or, excuse  
11 me, I mentioned Hollywood Hills and Santiago. I was in  
12 error in saying Santiago. I meant to say Lukens and  
13 Hollywood Hills and I have another site at Houser.

14 Q I don't think it's that critical, but I just  
15 wanted to make sure.

16 CHIEF JUDGE CHACHKIN: Is that 91?

17 THE WITNESS: No.

18 CHIEF JUDGE CHACHKIN: Okay, thank you.

19 BY MR. KELLER:

20 Q Mr. Sobel, I just have a couple of questions for  
21 you. First of all, you just testified that the first date  
22 in which you submitted the management agreement to the  
23 Bureau was July 3, 1996. That was the date, well, actually,  
24 I stipulated to the date. That was when you testified that  
25 the first time you submitted a copy to the Bureau was in

1 response to the 308(b) request.

2 Mr. Sobel, isn't it true that oral representations  
3 were made to the Bureau regarding the existence of the  
4 management agreement as early as 1995?

5 A That's correct.

6 Q Do you know by whom those were made?

7 A By yourself and counsel.

8 Q Isn't it true that this was done in an effort to  
9 secure a meeting with the Bureau, in order to find out what  
10 the problem was with the hold up on your applications?

11 MR. SCHAUBLE: Objection, Your Honor. We seem to  
12 be dealing with hearsay here.

13 CHIEF JUDGE CHACHKIN: We're talking about the  
14 witness. Overruled.

15 THE WITNESS: Yes.

16 BY MR. KELLER:

17 Q Did you not instruct me to advise the Bureau that  
18 you would be happy to come to Washington or Gettysburg and  
19 provide them with any information and answer any questions?

20 A Yes, we tried very, very hard to meet with the  
21 Bureau and talk to them about it and they refused.

22 Q And, do you recall that I advised you that on at  
23 least one occasion, 1995, I personally advised the Bureau  
24 that there was a written management agreement and that a  
25 copy of it had already been produced to them in discovery in

1 the Kay proceeding?

2 A Yes.

3 Q The only other question that I have for you, Mr.  
4 Sobel, has to do with your statement that it was your  
5 understanding all along with Mr. Kay that he would absorb  
6 the legal costs associated with the management agreement  
7 stations. For these types of land mobile stations, do you  
8 typically incur very much in the way of legal costs?

9 A No, not at all.

10 MR. KELLER: No further questions.

11 CHIEF JUDGE CHACHKIN: Is there something you want  
12 to clarify?

13 THE WITNESS: Yes, one thing.

14 CHIEF JUDGE CHACHKIN: Go ahead.

15 MR. KELLER: Oh, you want to clarify with me?

16 (Pause.)

17 MR. KELLER: No, Your Honor, the witness just  
18 consulted with me on something that's purely a matter of  
19 law, not fact. If it's an issue, I'll raise it in legal  
20 arguments later.

21 CHIEF JUDGE CHACHKIN: Thank you, sir. Do you  
22 have any further questions?

23 MR. SCHAUBLE: Can we go off the record for a  
24 second?

25 CHIEF JUDGE CHACHKIN: Yes.



1 (Discussion held off the record.)

2 CHIEF JUDGE CHACHKIN: Back on the record.

3 MR. SCHAUBLE: No further questions, Your Honor.

4 CHIEF JUDGE CHACHKIN: Thank you very much, Mr.

5 Sobel. You're excused, Mr. Sobel.

6 THE WITNESS: Thank you.

7 (Witness excused.)

8 CHIEF JUDGE CHACHKIN: All right, we'll be in  
9 recess until 9 a.m. tomorrow morning.

10 (Whereupon, at 3:05 p.m., the hearing was  
11 recessed, to reconvene at 9:00 a.m. on Tuesday, January 12,  
12 1999.)

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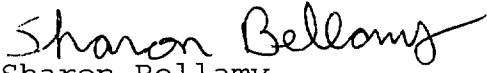
CASE TITLE: IN RE: JAMES A. KAY, JR.

HEARING DATE: January 11, 1999

LOCATION: Washington, D.C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.


Date: 1-11-99

  
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